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Human Rights Council
Working Group on Arbitrary Detention

Opinions adopted by the Working Group on Arbitrary Detention at its seventy-first session, 17–21 November 2014

No. 44/2014 (Republic of the Congo)

Communication addressed to the Government on 28 July 2014

Concerning: Mbanza Judicaël, Kimangou Joseph, Miakamouna Nzingoula Sylvain, Bibila Gilbert, Mabiala Mpandzou Paul Marie, Tsiakaka Valentin, Baboyi Antoine, Silaho René, Matimouna Mouyecket Euloge, Kialounga Pierre Placide, Tandou Jean Claude Davy, Ngoma Sylvain Privat, Banangouna Dominique Mesmin, Londhet Moussa Landry[1]

The Government has not replied to the communication.

The State is a party to the International Covenant on Civil and Political Rights, to which it acceded on 5 October 1983.

1. The Working Group on Arbitrary Detention was established by resolution 1991/42 of the Commission on Human Rights, which extended and clarified the Working Group's mandate in its resolution 1997/50. The Human Rights Council assumed the mandate in its decision 2006/102 and extended it for a three-year period by Council resolution 15/18 of 30 September 2010. The mandate was extended for a further three years by Council resolution 24/7 of 26 September 2013. In accordance with its methods of work (A/HRC/16/47, annex), the Working Group transmitted the above-mentioned communication to the Government.

2. The Working Group regards deprivation of liberty as arbitrary in the following cases:

(a) When it is clearly impossible to invoke any legal basis justifying the deprivation of liberty (as when a person is kept in detention after the completion of his sentence or despite an amnesty law applicable to him) (category I);

[1] The Working Group has retained the names as spelled in the judgement issued on 31 March 2014 by the indictment chamber of Pointe-Noire court of appeal.

(b) When the deprivation of liberty results from the exercise of the rights or freedoms guaranteed by articles 7, 13, 14, 18, 19, 20 and 21 of the Universal Declaration of Human Rights and, insofar as States parties are concerned, by articles 12, 18, 19, 21, 22, 25, 26 and 27 of the International Covenant on Civil and Political Rights (category II);

(c) When the total or partial non-observance of the international norms relating to the right to a fair trial, established in the Universal Declaration of Human Rights and in the relevant international instruments accepted by the States concerned, is of such gravity as to give the deprivation of liberty an arbitrary character (category III);

(d) When asylum seekers, immigrants or refugees are subjected to prolonged administrative custody without the possibility of administrative or judicial review or remedy (category IV);

(e) When the deprivation of liberty constitutes a violation of international law for reasons of discrimination based on birth; national, ethnic or social origin; language; religion; economic condition; political or other opinion; gender; sexual orientation; or disability or other status, and which aims towards or can result in ignoring the equality of human rights (category V).

Submissions

Communication from the source

3. The source relates that, on 21 August 2013, a working meeting of members of the Cercle des Démocrates et Républicains du Congo (Congolese Circle of Democrats and Republicans – CDRC) was taking place at the home of the party's vice-president, Miakamouna Nzingoula Sylvain, in the Mpaka "Belle Vie" district of Pointe-Noire. Officers of the Pointe-Noire police force and gendarmerie allegedly burst in at 8 a.m. and took away all those present. The other party members and supporters were arrested without a warrant by the officers that same day, either in the street or at their homes. All were detained in Pointe-Noire prison. The arrests were allegedly made in response to a protest march held earlier that day, during which the persons in question had waved placards reading "*Carton rouge = démission du gouvernement*" ("Red card = government resignation"), which, according to the source, had been interpreted by the Congolese State as an act of rebellion justifying their arrest. Nevertheless, officials had allegedly stated that the individuals would not be arrested, as they had neither committed an offence nor violated the laws of the Republic.

4. In the various case materials submitted to the Working Group, the parties to the complaint who are still in detention are identified as follows:

(a) Mbanza Judicaël is a Congolese national born on 23 August 1984[2] in Kinkala. He is unemployed, single and a father of seven. He was not subject to military service and does not appear to have been sentenced or prosecuted in the past. He is a member of CDRC and lives in the Ngoyo district of Pointe-Noire;

(b) Kimangou Joseph is a Congolese national born on 6 October 1963 in Mindouli. He is a taxi driver, single and a father of six. He was not subject to military service and does not appear to have been sentenced or prosecuted in the past. He is a member of CDRC and lives in the Ngoyo district of Pointe-Noire;

[2] The detainees' dates of birth are those contained in the judgement issued on 31 March 2014 by the indictment chamber of Pointe-Noire court of appeal.

(c) Miakamouna Nzingoula Sylvain is a Congolese national born around 1951 in Kigoma. He is an anaesthetist, married and a father of seven. He was not subject to military service and was reportedly given a 1-year suspended prison sentence in the past. He is vice-president of CDRC and lives in the Mpaka "Belle Vie" district of Pointe-Noire;

(d) Bibila Gilbert is a Congolese national born on 13 February 1958 in the village of Kivimba, in the district of Ngoma Tsé-Tsé. He is a secondary-school teacher, single and a father of three. He was not subject to military service and does not appear to have been sentenced or prosecuted in the past. He is the general secretary of CDRC and lives in the Ngoyo district of Pointe-Noire;

(e) Mabiala Mpandzou Paul Marie is a Congolese national born on 3 May 1972 in Massangi, in the department of Bouenza. He is a photographer, single and a father of four. He was not subject to military service and does not appear to have been sentenced or prosecuted in the past. He is a member of CDRC and lives in the Mpaka district of Pointe-Noire;

(f) Tsiakaka Valentin is a Congolese national born on 14 February 1968 in Vindza. He is a driver, single and a father of five. He was not subject to military service and does not appear to have been sentenced or prosecuted in the past. He is a member of CDRC and lives in the Mpaka district of Pointe-Noire;

(g) Baboyi Antoine is a Congolese national born on 7 September 1960 in Linzolo. He is a driver by occupation. He was not subject to military service and does not appear to have been sentenced or prosecuted in the past. He is a member of CDRC and lives in the Mpaka district of Pointe-Noire;

(h) Silaho René is a Congolese national born around 1951 in the village of Ngampoko. He is retired. He was not subject to military service and claims never to have been sentenced or prosecuted. He is a member of CDRC and lives in the Mpaka district of Pointe-Noire;

(i) Matimouna Mouyecket Euloge is a Congolese national born on 17 April 1984 in Baratier. He is a driver by occupation. He was not subject to military service and does not appear to have been sentenced or prosecuted in the past. He is a member of CDRC and lives in the Mpaka district of Pointe-Noire;

(j) Kialounga Pierre Placide is a Congolese national born on 22 November 1966 in Pointe-Noire. He is unemployed and was not subject to military service. He does not appear to have been sentenced or prosecuted in the past. He is a member of CDRC and lives in the Mpaka district of Pointe-Noire;

(k) Tandou Jean Claude Davy is a Congolese national born on 9 August 1974 in Hamon. He is unemployed and was not subject to military service. He does not appear to have been sentenced or prosecuted in the past. He is a member of CDRC and lives in the Mpaka district of Pointe-Noire;

(l) Ngoma Sylvain Privat is a Congolese national born on 3 September 1984 in Brazzaville. He is a driver by occupation. He was not subject to military service and does not appear to have been sentenced or prosecuted in the past. He is a member of CDRC and lives in the Mpaka district of Pointe-Noire;

(m) Banangouna Dominique Mesmin is a Congolese national born on 31 March 1976 in Moussana. He is a welder and painter. He was not subject to military service and does not appear to have been sentenced or prosecuted in the past. He is a member of CDRC and lives in the Mpaka district of Pointe-Noire;

(n) Londhet Moussa Landry is a Congolese national born on 8 June 1977 in Brazzaville. He is a construction electrician. He was not subject to military service and does

not appear to have been sentenced or prosecuted in the past. He is a member of CDRC and lives in the Mpaka district of Pointe-Noire.

5. The source reports that the president of CDRC, Modeste Boukadia, telephoned those responsible to find out the reason for the arrests. The officials seemed surprised by the call, suggesting that the real target of the arrests was Mr. Boukadia himself. According to the source, this was confirmed by the fact that a second squad was sent out to try and intercept him and Pointe-Noire was sealed off. Moreover, the source states that an arrest warrant for rebellion was issued against the CDRC president following the holding of rallies in Brazzaville on 11 May 2013 and Pointe-Noire on 29 June 2013, which the President of the Republic of the Congo had allegedly branded as a threat to State security, an insurrection and public incitement to revolt.

6. The source reports that the State prosecutor declared that there was no case against the individuals concerned and that only a political decision could authorize their release, as the justice system had no evidence to support bringing charges against them. Consequently, the CDRC president, Mr. Boukadia, allegedly wrote to the Minister of Justice of the Republic of the Congo on 13 September 2013 assuring him of his party's peaceful intentions and requesting the detainees' immediate release. According to the source, the letter received no response. The source adds that Mr. Boukadia sent the same request to the President of the Republic of the Congo in a letter dated 10 October 2013, which also remained unanswered. The source reports that the President did, however, make a promise through the Minister of Justice to release the individuals. Moreover, the source appears convinced that the President signed a release order.

7. The source reports that, despite this measure, the 14 party members and activists continued to be held in Pointe-Noire prison. The source adds that some of them were ill and did not receive the necessary treatment.

8. Among the documents submitted to the Working Group by the source is an order issued on 23 October 2013 by the Pointe-Noire *tribunal de grande instance* (court of major jurisdiction) charging 28 persons, including the 14 party members, with rebellion and referring the case file to the public prosecutor of Pointe-Noire court of appeal.

9. The source reports that, on 18 December 2013, after bringing the facts to the attention of France and the European Union, CDRC president Mr. Boukadia filed a case against the President, the Minister of Justice and the Congolese State with the International Criminal Court and complained to the Paris *tribunal de grande instance* and the State prosecutor in Paris.

10. According to the information received, on 31 March 2014, the indictment chamber of Pointe-Noire court of appeal issued a judgement against the persons named in the order of 23 October 2013. The judgement commits them to trial before Pointe-Noire criminal court for threatening the internal security of the State (an act covered by article 87 of the Criminal Code and articles 195 and 198 of the Code of Criminal Procedure) and orders their continued detention.

11. The indictment specifies that, after the rallies, CDRC decided to organize a march. Two preparatory meetings were reportedly held on 20 August 2013. The following day, the day of the march, the activists allegedly waved placards reading "*Gouvernement d'union nationale*" ("Government of national unity") and "*Carton rouge = démission du gouvernement*" ("Red card = government resignation"). Law enforcement officers then intervened to maintain public order after burning barricades were erected in the streets, arresting the activists and seizing materials from their homes. Among the confiscated items was a board displaying the party's ambitions, namely, a reference to the Constitution of a future State of South Congo. The activists allegedly admitted that the purpose of the march

was to put in place a government of national unity, which was why the indictment chamber had decided to charge them with threatening the internal security of the State.

12. According to the source, a trial took place before Pointe-Noire criminal court on 7 April 2014, in which the 14 individuals were assisted by lawyers and human rights bodies, but no first-instance judgement was ever issued. The source further reports that the prefect of Pointe-Noire, who had been summoned to provide evidence of the threat to State security, failed to appear.

13. According to the information received, a judgement was issued on 9 April 2014, but it has not been possible to obtain a copy. The judgement has not been published and, according to the source, newspapers are prohibited from disseminating it, although some media have managed to mention it. According to the information received, of the 28 persons indicted, 13 were released, 1 was sentenced in absentia to hard labour and the other 14, to whom this communication refers, received the following prison terms: 7 years for Miakamouna Nzingoula Sylvain, Mabiala Mpandzou Paul Marie and Tsiakaka Valentin; 5 years for Mbanza Judicaël, Kimangou Joseph, Bibila Gilbert, Baboyi Antoine, Silaho René, Matimouna Mouyecket Euloge, Kialounga Pierre Placide, Tandou Jean Claude Davy and Banangouna Dominique Mesmin; and 2 years for Londhet Moussa Landry and Ngoma Sylvain Privat.

14. According to the source, the 14 individuals were eventually transferred, on 18 July 2014, from Pointe-Noire prison to an unknown location in Brazzaville, with no indication of the reasons for the transfer. They have allegedly been held in an unknown location since that date.

15. The source claims that the detentions are arbitrary, in that they result from a violation of articles 9, 19 and 20 of the Universal Declaration of Human Rights and articles 9, 19 and 21 of the International Covenant on Civil and Political Rights, on the freedoms of opinion, expression and assembly, and therefore come under category II of the criteria applicable to the consideration of cases submitted to the Working Group.

16. According to the source, the detentions are also arbitrary under category III of the criteria referred to by the Working Group, as guarantees of a fair trial were not respected. The lack of a warrant for their detention, the delays in bringing charges and issuing a judgement and the absence of a first-instance judgement are in direct violation of articles 10 of the Universal Declaration of Human Rights and 14 of the International Covenant on Civil and Political Rights.

Response from the Government

17. In a letter dated 28 July 2014, the Working Group transmitted the above allegations to the Government of the Republic of the Congo and requested detailed information on the current situation of the 14 individuals in question and clarification of the legal basis justifying their detention.

18. The Working Group regrets that, to date, the Government has neither replied to the allegations transmitted to it nor requested an extension of the time limit for doing so in accordance with paragraphs 15 and 16 of the Working Group's methods of work.

19. Despite the Government's failure to reply, the Working Group considers that it is in a position to render an Opinion on the detention of the 14 CDRC members, in conformity with paragraph 16 of its methods of work and on the sole basis of the information provided by the source.

Discussion

20. Firstly, the Working Group is of the view that grouping all the files concerning Mbanza Judicaël, Kimangou Joseph, Miakamouna Nzingoula Sylvain, Bibila Gilbert, Mabiala Mpandzou Paul Marie, Tsiakaka Valentin, Baboyi Antoine, Silaho René, Matimouna Mouyecket Euloge, Kialounga Pierre Placide, Tandou Jean Claude Davy, Ngoma Sylvain Privat, Banangouna Dominique Mesmin and Londhet Moussa Landry is justified because the same facts led to their detention and conviction, as reported by the source.

21. Article 9 of the Universal Declaration of Human Rights stipulates that "[n]o one shall be subjected to arbitrary arrest, detention or exile", and thus prohibits all arbitrary arrest or detention. This prohibition is a fundamental rule of customary international law and is recognized as a peremptory norm of general international law or *jus cogens*.[3] The norm is also enshrined in article 9 of the International Covenant on Civil and Political Rights, to which the Republic of the Congo is a party, and article 9 of the Constitution of the Republic of the Congo of 20 January 2002.[4]

22. Moreover, articles 19 and 20 of the Universal Declaration of Human Rights and 19 and 21 of the International Covenant on Civil and Political Rights guarantee the exercise of the rights to freedom of opinion, expression, peaceful assembly and association. The imparting of information and political opinions by members of a party is at the core of these rights, and restrictions can be imposed only on a basis of strict proportionality. Moreover, any restrictions must be provided for in law.

23. The Human Rights Committee, in paragraph 25 of its general comment No. 34 (2011) on freedoms of opinion and expression, sheds light on the application of the rule in article 19 of the Covenant, stating that: "a norm, to be characterized as a 'law', must be formulated with sufficient precision to enable an individual to regulate his or her conduct accordingly and it must be made accessible to the public." Laws must provide sufficient guidance to those charged with their execution to enable them to ascertain what sorts of expression are properly restricted and what sorts are not.

24. In paragraph 34 of General Comment No. 34, the Committee also provides that "[r]estrictions must not be overbroad" and must conform to the principle of proportionality. In addition, according to the Human Rights Committee, a State must demonstrate "in specific and individualized fashion the precise nature of the threat, and the necessity and proportionality of the specific action taken, in particular by establishing a direct and immediate connection between the expression and the threat".[5]

25. The Working Group has already addressed the issue of overly broad definitions of criminal offences in its earlier jurisprudence.[6]

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[3] See the established practice of the United Nations as set out by the Human Rights Committee in its general comment No. 29 (2001) on states of emergency, para. 11, and in Deliberation No. 9 of the Working Group on Arbitrary Detention (A/HRC/22/44), para. 79.

[4] Extract from the Constitution of 20 January 2002: "The liberty of the human person shall be inviolable. No one may be accused, arrested or detained arbitrarily. All accused persons shall be presumed innocent until their guilt has been established through proceedings in which their rights as defendants are protected. All acts of torture and all forms of cruel, inhuman or degrading treatment shall be prohibited." The Constitution is available online on several government websites, including the website of the Presidency (www.presidence.cg/files/my_files/constit200102.pdf).

[5] General comment No. 34, paras. 34 and 35.

[6] See, inter alia, Opinions Nos. 28/2010 (Myanmar), para. 32; 18/2011 (Saudi Arabia), para. 20; and 25/2012 (Rwanda), paras. 55 and 59.

26. Moreover, the Working Group stated in its Deliberation No. 8 on deprivation of liberty linked to/resulting from the use of the Internet that a vague and general reference to the interests of national security or public order, without being properly explained and documented, is not enough to convince the Working Group that the restrictions on the freedom of expression by way of deprivation of liberty are necessary (E/CN.4/2006/7, para. 43).

27. According to the source, the order issued by the Pointe-Noire *tribunal de grande instance* charged the CDRC members with rebellion. Rebellion, however, is an act of violent opposition to a person vested with public authority acting in the lawful performance of his or her duties. In the present case, the fact that the CDRC members waved placards reading "*Gouvernement d'union nationale*" ("Government of national unity") or "*Carton rouge = démission du gouvernement*" ("Red card = government resignation") does not meet the definition of rebellion. The CDRC members were simply exercising their right to freedom of expression. The judgement issued by the indictment chamber of Pointe-Noire court of appeal on 31 March 2014 states that the CDRC members also incited and instigated residents of the Ngoyo and Mpaka districts to rebel against the authority of the head of State and implicitly espoused the ideal of dividing the Congo into North and South. The chamber adds in its judgement that certain CDRC activists and supporters constructed barricades from burning tyres and wrecked vehicles. The Working Group considers that these acts, if proven, do not reach the threshold of violence required for them to be viewed as acts of rebellion.

28. The Pointe-Noire court of appeal reportedly went further than the order by invoking a threat to the internal security of the State, in accordance with articles 87 of the Criminal Code and 195 and 198 of the Code of Criminal Procedure. The notion of "threat to the internal security of the State" is vague and imprecise. It does not make it possible to ascertain what conducts can properly be restricted. Moreover, despite the tensions that exist in the Congo, the Working Group considers that the facts are not enough to constitute, objectively, a "threat to the internal security of the State". Moreover, the necessity and proportionality of the detention have not been demonstrated by the Government and cannot be assumed by the Working Group in the absence of any evidence provided by the Government, either directly or during domestic legal proceedings. The Working Group notes that the prefect of Pointe-Noire, a State official, was summoned to provide evidence of the threat to State security, but failed to appear.

29. The Working Group therefore concludes that depriving the 14 CDRC members of their liberty is contrary to articles 9, 19 and 20 of the Universal Declaration of Human Rights and 9, 19 and 21 of the International Covenant on Civil and Political Rights. It should be recalled, once again, that these customary and treaty-based norms are binding on the Republic of the Congo.

30. Regarding the right to a fair trial, the source has indicated that Pointe-Noire police and gendarmerie officers carried out the arrests without a warrant and that the order of the Pointe-Noire *tribunal de grande instance* charging 28 persons, including the 14 currently in detention, with rebellion was not issued until 23 October 2013, two months after the arrests. The Working Group considers this to be a violation of article 9, paragraph 2, of the International Covenant on Civil and Political Rights, which provides that "[a]nyone who is arrested shall be informed, at the time of arrest, of the reasons for his arrest and shall be promptly informed of any charges against him".

31. As to the source's allegations concerning the time that elapsed between the arrests and the judgement, the Working Group notes that a delay of over seven months is contrary to articles 9, paragraph 3, and 14, paragraph 3 (c), of the International Covenant on Civil and Political Rights, which recognize the right of anyone arrested or detained on a criminal charge to be brought promptly before a judge and tried within a reasonable time.

32. The source also claims to have been deprived of his right to a second hearing, pursuant to which an initial judgement may be appealed. This principle is recognized implicitly in article 14, paragraph 5, of the International Covenant on Civil and Political Rights, which provides that "[e]veryone convicted of a crime shall have the right to his conviction and sentence being reviewed by a higher tribunal according to law". In the present case, the source states that a trial took place on 7 April 2014 before the Pointe-Noire criminal court, a special unit of the court of appeal, but that no first-instance judgement was ever issued. The Working Group therefore finds a violation of article 14, paragraph 5, of the International Covenant on Civil and Political Rights.

33. The Working Group considers that the non-observance of international norms relating to the right to a fair trial is of such gravity as to give the deprivation of liberty an arbitrary character.

34. Moreover, the source specifies that, on 18 July 2014, the 14 detainees were transferred from Pointe-Noire prison to an unknown location in Brazzaville, with no indication of the reasons for the transfer. The Working Group wishes to stress that, in accordance with principle 16 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, adopted by the General Assembly of the United Nations in its resolution 43/173 of 9 December 1988, "a detained or imprisoned person shall be entitled to notify or to require the competent authority to notify members of his family or other appropriate persons of his choice [...] of the transfer and of the place where he is kept in custody".

35. This principle is also set out in rule 44 of the Standard Minimum Rules for the Treatment of Prisoners, adopted by the First United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held at Geneva in 1955, and approved by the Economic and Social Council by its resolutions 663 C (XXIV) of 31 July 1957 and 2076 (LXII) of 13 May 1977. The Working Group holds that the transfer of the prisoners is in violation of the above-mentioned norms.

36. According to the information reported by the source, during their detention in Pointe-Noire prison, some of the 14 detainees were ill and did not receive treatment. However, as the source has provided no evidence of such a situation, the Working Group cannot conclude that there was a violation of the detainees' rights. The Working Group considers it necessary, nevertheless, to remind the Republic of the Congo of its obligations with respect to the treatment of prisoners, in accordance with international norms.

Disposition

37. In the light of the foregoing, the Working Group renders the following Opinion:

> The deprivation of liberty of Mbanza Judicaël, Kimangou Joseph, Miakamouna Nzingoula Sylvain, Bibila Gilbert, Mabiala Mpandzou Paul Marie, Tsiakaka Valentin, Baboyi Antoine, Silaho René, Matimouna Mouyecket Euloge, Kialounga Pierre Placide, Tandou Jean Claude Davy, Ngoma Sylvain Privat, Banangouna Dominique Mesmin and Londhet Moussa Landry is arbitrary and in violation of articles 9, 19 and 20 of the Universal Declaration of Human Rights and articles 9, 14, 19 and 21 of the International Covenant on Civil and Political Rights. Consequently, it comes under categories I, II and III of the criteria applicable to the consideration of cases submitted to the Working Group.

38. The Working Group therefore requests the Government of the Republic of the Congo to release the above-mentioned persons without delay and take the necessary steps to remedy the material and moral injury that they have suffered, including by providing reasonable and appropriate compensation in accordance with article 9, paragraph 5, of the International Covenant on Civil and Political Rights.

39. The Working Group recalls that the Human Rights Council has requested all States to cooperate with the Working Group, take account of its views and take appropriate steps to remedy the situation of persons arbitrarily deprived of their liberty, and to inform the Working Group of the steps they have taken.[7] The Working Group therefore requests the full cooperation of the Republic of the Congo in implementing this Opinion to provide effective redress for a violation of international law.

[*Adopted on 19 November 2014*]

[7] Human Rights Council resolution 24/7, paras. 3, 6 and 9.

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Working Group on Arbitrary Detention

Opinions adopted by the Working Group on Arbitrary Detention at its seventy-first session, 17–21 November 2014

No. 45/2014 (Togo)*

Communication addressed to the Government on 4 August 2014

Concerning Kpatcha Gnassingbé, Ougbakiti Seïdou, Esso Gnassingbé, Abi Atti, Soudou Tchinguilou, Kokou Tchaa Dontema and Efoé Sassouvi Sassou

The Government replied to the communication on 8 October 2014.

The State is a party to the International Covenant on Civil and Political Rights, to which it acceded on 24 May 1984.

1. The Working Group on Arbitrary Detention was established in resolution 1991/42 of the former Commission on Human Rights, which extended and clarified the Working Group's mandate in its resolution 1997/50. The Human Rights Council assumed the mandate in its decision 2006/102 and extended it for a three-year period in its resolution 15/18 of 30 September 2010. The mandate was extended for a further three years by Council resolution 24/7 of 26 September 2013. Acting in accordance with its methods of work (A/HRC/16/47, annex), the Working Group transmitted the above-mentioned communication to the Government.

2. The Working Group regards deprivation of liberty as arbitrary in the following cases:

(a) When it is clearly impossible to invoke any legal basis justifying the deprivation of liberty (as when a person is kept in detention after the completion of his or her sentence or despite an amnesty law applicable to the detainee) (category I);

* In accordance with paragraph 5 of the methods of work of the Working Group (A/HRC/16/47, annex), the member of the Working Group who is a national of the State did not participate in the consideration of the case or the discussion thereof.

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(b) When the deprivation of liberty results from the exercise of the rights or freedoms guaranteed by articles 7, 13, 14, 18, 19, 20 and 21 of the Universal Declaration of Human Rights and, insofar as States parties are concerned, by articles 12, 18, 19, 21, 22, 25, 26 and 27 of the International Covenant on Civil and Political Rights (category II);

(c) When the total or partial non-observance of the international norms relating to the right to a fair trial, established in the Universal Declaration of Human Rights and in the relevant international instruments accepted by the States concerned, is of such gravity as to give the deprivation of liberty an arbitrary character (category III);

(d) When asylum seekers, immigrants or refugees are subjected to prolonged administrative custody without the possibility of administrative or judicial review or remedy (category IV);

(e) When the deprivation of liberty constitutes a violation of international law for reasons of discrimination based on birth; national, ethnic or social origin; language; religion; economic condition; political or other opinion; gender; sexual orientation; or disability or other status, and which aims towards or can result in ignoring the equality of human rights (category V).

Submissions

Communication from the source

3. This case was submitted to the Working Group on Arbitrary Detention in the following terms.

4. Seven persons of Togolese nationality were allegedly arrested between April and October 2009 by the Togolese authorities and detained in various prisons around the country. The persons reportedly concerned are: Kpatcha Gnassingbé, a member of the Togolese National Assembly, born on 6 September 1970, who has been held in Lomé civil prison since 17 April 2009; Ougbakiti Seïdou, a chief warrant officer (retired) in the Togolese armed forces, born in 1947, who has been held in Lomé civil prison since 28 April 2009; Essozimma (known as Esso) Gnassingbé, a telecommunications technician, born on 30 September 1979, who has been held in Tsévié civil prison since 5 May 2009; Abi Atti, a major in the Togolese armed forces, born on 7 February 1963, who has been held in Atakpamé civil prison since 14 October 2009; Soudou Tchinguilou, an accounting manager, born on 18 April 1971, who has been held in Atakpamé civil prison since 28 April 2009; Kokou Tchaa Dontema, a captain in the gendarmerie, born on 4 March 1970, who has been held in Sokodé civil prison since 14 October 2009; and Efoé Sassouvi Sassou, a second lieutenant (discharged) in the gendarmerie, employed at the United States Embassy in Lomé, born on 19 July 1969, who has been held in Sokodé civil prison since 28 April 2009.

5. According to the information received, on 12 April 2009, at around 10 p.m., a group of soldiers belonging to the Rapid Intervention Force, an elite unit of the Togolese armed forces, burst into the home of Kpatcha Gnassingbé and opened fire with automatic weapons and rocket launchers. The source reports that Kpatcha Gnassingbé was able to contact his brother, Colonel Rock Gnassingbé, the commander of a Togolese army tank unit, and seek his intervention.

6. On 15 April 2009, Kpatcha Gnassingbé went to the Embassy of the United States of America in Lomé to seek protection; at 7.30 a.m., the Commander of the Togolese National Gendarmerie arrived at the Embassy with an arrest warrant, obliging the United States authorities to hand Kpatcha Gnassingbé over to him. The source states that Mr. Gnassingbé was accused of conspiring to undermine Togolese State security. He was placed in detention pursuant to a warrant of commitment dated 17 April 2009.

7. Subsequently, some 30 people, including the 6 other persons mentioned in the present communication, were arrested between April and October 2009 on the same grounds and placed in pretrial detention pursuant to a warrant of commitment. It is believed that 10 persons were ultimately released on 14 April 2011, but that Kpatcha Gnassingbé and the 6 persons mentioned in paragraph 4 above remain in custody.

8. These seven persons were reportedly held incommunicado for more than 2 years at the National Intelligence Agency, the Gnassingbé Eyadema military camp of the Togo Joint Regiment in Lomé and the National Gendarmerie camp in Lomé, where they were allegedly subjected to acts of torture. The source further states that they were denied access to legal counsel for more than 18 months.

9. These persons were committed for trial to the Judicial Chamber of the Supreme Court. In a judgement delivered on 15 September 2011, the Court sentenced them to terms of imprisonment for conspiracy to commit a crime against State security. Ougbakiti Seïdou, Esso Gnassingbé, Soudou Tchinguilou and Efoé Sassouvi Sassou were each sentenced to 10 years' imprisonment; Kokou Tchaa Dontema was sentenced to 15 years' imprisonment; and Kpatcha Gnassingbé and Abi Atti were each sentenced to 20 years' imprisonment.

10. The source asserts that Kokou Tchaa Dontema and Esso Gnassingbé were deprived of their right to defence during the trial, inasmuch as the judges of the Judicial Chamber of the Supreme Court refused to allow them to speak in their own defence and their lawyers withdrew from the proceedings in protest. The judges then allegedly refused to allow the lawyers in question to continue defending their clients.

11. During the trial, the detainees recounted how they had been subjected to acts of violence and torture. In its judgement, the Judicial Chamber therefore also requested the Government of Togo to undertake, as a matter of priority, an impartial inquiry into the allegations of torture.

12. The National Human Rights Commission was subsequently given the task of carrying out the inquiry and reportedly concluded in its report of 13 February 2012 that inhuman and degrading acts of physical and mental violence had been committed against these persons. On the basis of this report, the seven convicted persons petitioned the Supreme Court to review its judgement No. 59/11 of 15 September 2011 and suspend its execution; however, the Court, in a ruling on 19 July 2012, declared the petition inadmissible.

13. Subsequently, on 22 July 2011 (application received on 8 August 2011), these persons applied to the Court of Justice of the Economic Community of West African States (ECOWAS) for a finding that their rights had been violated, specifically through the unlawful arrest of Kpatcha Gnassingbé — at the time a member of the National Assembly and thus covered by parliamentary immunity, which has not been revoked — and the acts of torture and other cruel, inhuman or degrading treatment committed against all of these persons. The applicants sought the cessation of their incommunicado detention and their immediate release on the grounds that their rights to a fair trial, to defence, to be tried within a reasonable time by an independent and impartial court and to protection from physical and mental injury had been violated.

14. According to the information received, the Government informed the ECOWAS Court of Justice of the reasons justifying the detention. Prompted by reports about the planning of a crime against State security, the authorities first arrested Kpatcha Gnassingbé during the night of 12 April 2009 and then between April and October 2009 arrested certain of his associates, including the six other persons concerned in this case, at the request of the public prosecutor of the Lomé court of first instance. A search of the residence of Kpatcha Gnassingbé reportedly led to the seizure of military weapons. An investigation carried out by an examining magistrate appointed by the Director of Public Prosecutions in order to

comply with immunity rules reportedly revealed that Kpatcha Gnassingbé was planning to depose his brother, Faure Gnassingbé, the President of the Republic.

15. The source states that, in its judgement No. ECW/CCJ/JUD/06/13 of 3 July 2013, the ECOWAS Court of Justice found that the "Togolese State had, through its agents, committed acts of torture against the applicants and thus breached their right to protection from physical and mental injury", a finding which the Government did not deny. Although the Court found that parliamentary immunity had not been breached and that the right to be tried within a reasonable time and the right to visits had not been violated, it did find a violation of the right to a fair trial, arising from the use of evidence obtained through torture, and a violation of the right to defence, arising from the applicants' lack of access to legal counsel. The Court ordered that steps should be taken as a matter of urgency to put an end to the violation of the right to a fair trial. However, notwithstanding the Court's judgement — with which the Government has failed to comply — these persons reportedly remain in detention.

16. The source reports that article 53 of the Constitution of Togo of 14 October 1992 and article 77, subparagraphs 1 and 2, and article 79, subparagraphs 1 and 2, of the rules of procedure of the National Assembly prohibit the prosecution, arrest or trial of Assembly members as long as their parliamentary immunity has not been revoked. Even in a case of flagrante delicto, the Bureau of the National Assembly must be informed and give its express consent. In the present case, the source reports that the Togolese authorities arrested, detained and tried Kpatcha Gnassingbé, a member of the National Assembly, in violation of these legal provisions. Accordingly, the source considers that the detention of Kpatcha Gnassingbé is arbitrary, in violation of article 9 of the International Covenant on Civil and Political Rights.

17. Furthermore, the source emphasizes that there is a lack of evidence connecting these seven persons to an alleged crime against State security; it points out that the only evidence presented is the statements obtained through torture while these persons were detained at the premises of the National Intelligence Agency and that these acts of torture were confirmed by the National Human Rights Commission in its report of 15 February 2012 and by the ECOWAS Court of Justice in its judgement No. ECW/CCJ/JUD/06/13 of 3 July 2013. Consequently, according to the source, the detention of these persons is the result of a breach of the right to a fair trial (as provided for in article 14 of the International Covenant on Civil and Political Rights) arising from the use during the trial of evidence obtained through torture and from the violation of their right to defence (as provided for in article 11 of the Universal Declaration of Human Rights and article 14 of the International Covenant on Civil and Political Rights) and their right to be tried promptly. The source asserts that the detention and conviction of these persons were the outcome of an unfair trial.

Response from the Government

18. The Working Group transmitted the above allegations to the Government of Togo in a letter dated 4 August 2014, requesting that it provide detailed information about the current situation of Kpatcha Gnassingbé, Ougbakiti Seïdou, Esso Gnassingbé, Abi Atti, Soudou Tchinguilou, Kokou Tchaa Dontema and Efoé Sassouvi Sassou and clarification of the legal provisions justifying their detention. On 8 October 2014, the Government responded to the allegations transmitted to it.

19. In its response, the Government maintains that the seven persons concerned in this case of deprivation of liberty were found guilty of conspiring to undermine internal State security, an offence under articles 229, 230 and 232 of the Criminal Code. The Judicial Chamber of the Supreme Court of Togo, in its judgement No. 59/11 of 15 September 2011, sentenced them to prison terms ranging from 10 to 20 years.

20. The Government adds that the National Human Rights Commission concluded, in its report of 15 February 2012, that inhuman and degrading acts of physical and mental violence had been committed against the detainees and recommended, among other things, that the victims should receive fair compensation. In its Judgement of 3 July 2013, the ECOWAS Court of Justice ordered the Togolese State to pay 20 million CFA francs to each of the complainants who had been subjected to acts of torture and 3 million CFA francs to the other complainants who had not been subjected to acts of torture. The Government states that this compensation has been paid in full by the Togolese State.

21. With regard to the release of the detainees, the Government affirms that the ECOWAS Court of Justice has stated that there is no reason to order their release inasmuch as their detention has a legal basis and is not arbitrary. The Government states that the legal basis for the detention of these persons is articles 229, 230 and 232 of the Criminal Code of Togo and judgement No. 59/11 of 15 September 2011 of the Judicial Chamber of the Supreme Court.

Comments from the source

22. The Government's response was transmitted to the source for comment. In a letter dated 11 November 2014, the source maintains that, even though the Government has awarded compensation to each complainant as ordered by the ECOWAS Court of Justice, it has failed to ensure redress within the meaning of article 14 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. The source notes that the Court of Justice ordered the Togolese State to take the necessary steps, as a matter of urgency, to put an end to the violation of the right to a fair trial, which it has thus far failed to do.

Discussion

23. According to the information submitted to the Working Group, Kpatcha Gnassingbé was placed in detention pursuant to a warrant of commitment dated 17 April 2009. Ougbakiti Seïdou, Esso Gnassingbé, Abi Atti, Soudou Tchinguilou, Kokou Tchaa Dontema and Efoé Sassouvi Sassou were arrested between April and October 2009 on the same grounds and placed in pretrial detention pursuant to a warrant of commitment. Kpatcha Gnassingbé and the six other persons reportedly remain in custody.

24. The Judicial Chamber of the Supreme Court delivered a judgement on 15 September 2011 sentencing these persons to prison terms for conspiracy to commit a crime against State security. Ougbakiti Seïdou, Esso Gnassingbé, Soudou Tchinguilou and Efoé Sassouvi Sassou were each sentenced to 10 years' imprisonment; Kokou Tchaa Dontema was sentenced to 15 years' imprisonment; and Kpatcha Gnassingbé and Abi Atti were each sentenced to 20 years' imprisonment.

25. The allegations submitted by the source relate to incommunicado detention; acts of torture used to obtain confessions during the preliminary investigation, without any administrative or judicial inquiry having been conducted to determine the lawfulness of those confessions; and deprivation of the right to fundamental legal safeguards, such as access to a lawyer and the right to be tried within a reasonable time by an independent and impartial court. It is alleged that Kokou Tchaa Dontema and Esso Gnassingbé were also deprived of their right to defence.

26. In its response, the Government does not provide specific answers to the allegations, including those allegations relating to the acts of torture that were committed during the incommunicado detention of these persons. This silence is all the more troubling inasmuch as the allegations were confirmed by the ECOWAS Court of Justice and the National Human Rights Commission. Furthermore, it is inexplicable that no administrative or

judicial investigation has been ordered, particularly since the alleged confessions, which were obtained through torture, were decisive evidence in the conviction of these seven persons.

27. In that regard, it should be noted that the Government had an obligation, under article 12 of the Convention against Torture, to which Togo is a party, to "ensure that its competent authorities proceed to a prompt and impartial investigation, wherever there is reasonable ground to believe that an act of torture has been committed", especially since, under article 15 of the Convention, any statement obtained as a result of torture must not be invoked as evidence.

28. The Government is accused of holding these persons in incommunicado detention for approximately 18 months without bringing them before a judge during that period and without allowing them access to counsel.

29. The Working Group is of the view that secret detention is irreconcilably in violation of international human rights law, including during states of emergency and armed conflict. No jurisdiction should allow for individuals to be deprived of their liberty in secret for potentially indefinite periods, held outside the reach of the law, without the possibility of resorting to legal procedures, including habeas corpus (A/HRC/16/47, para. 54).

30. In its settled jurisprudence, the Working Group has confirmed that the prohibition of arbitrary detention forms part of customary international law and falls within the category of jus cogens norms (peremptory norms) and therefore gives rise to an obligation to undertake an investigation and, where appropriate, to the right to obtain compensation

31. According to the Committee against Torture, it is when suspects cannot communicate with their families and lawyers that they are most likely to be tortured (Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, arts. 2 and 11).

32. The violations cited have been condemned by the Working Group in its settled jurisprudence, as summarized above, especially inasmuch as they violate the right to defence and due process guarantees. On the basis of these observations, the Working Group finds that the detention and the conviction of the persons concerned on the basis of confessions obtained under torture — in the absence of any material or other evidence and without any investigation having taken place to confirm the veracity of the confessions — are in breach of articles 9, 10 and 11 of the Universal Declaration of Human Rights, and articles 9 and 14 of the International Covenant on Civil and Political Rights, and fall under category III of the categories applicable to the consideration of cases submitted to the Working Group.

Disposition

33. In the light of the foregoing, the Working Group renders the following opinion:

> The deprivation of liberty of Kpatcha Gnassingbé, Ougbakiti Seïdou, Esso Gnassingbé, Abi Atti, Soudou Tchinguilou, Kokou Tchaa Dontema and Efoé Sassouvi Sassou is arbitrary and constitutes a violation of the rights and freedoms guaranteed by articles 9, 10 and 11 of the Universal Declaration of Human Rights and articles 9 and 14 of the International Covenant on Civil and Political Rights. Accordingly, it falls within category III of the categories applicable to the consideration of cases submitted to the Working Group.

34. Consequent upon the opinion rendered, the Working Group requests the Government of Togo to order the immediate release of Kpatcha Gnassingbé, Ougbakiti Seïdou, Esso Gnassingbé, Abi Atti, Soudou Tchinguilou, Kokou Tchaa Dontema and Efoé Sassouvi Sassou, and to order an independent and impartial investigation of the acts of

torture to which these persons were allegedly subjected during their incommunicado detention, and to address any legal implications thereof in accordance with its international obligations by reviewing their trial or by providing full reparation for the injury caused, in accordance with article 9, paragraph 5, of the International Covenant on Civil and Political Rights.

35. The Working Group recalls that the Human Rights Council has requested all States to cooperate with the Working Group, to take account of its views and to take appropriate steps to remedy the situation of persons arbitrarily deprived of their liberty, and to inform the Working Group of the steps they have taken.[1] Accordingly, the Working Group requests the full cooperation of the Republic of Togo in implementing this opinion in order to provide an effective remedy for a violation of international law.

[*Adopted on 19 November 2014*]

[1] Human Rights Council resolution 24/7, paras. 3, 6 and 9.

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Working Group on Arbitrary Detention

Opinions adopted by the Working Group on Arbitrary Detention at its seventy-first session, 17–21 November 2014

No. 46/2014 (Cameroon)

Communication addressed to the Government on 15 August 2014

Concerning: Christophe Désiré Bengono

The Government has not replied to the communication.

The State is a party to the International Covenant on Civil and Political Rights, to which it acceded on 27 June 1984.

1. The Working Group on Arbitrary Detention was established by resolution 1991/42 of the Commission on Human Rights, which extended and clarified the Working Group's mandate in its resolution 1997/50. The Human Rights Council assumed the mandate in its decision 2006/102 and extended it for a three-year period in its resolution 15/18 of 30 September 2010. The mandate was extended for a further three years by Council resolution 24/7 of 26 September 2013. In accordance with its methods of work (A/HRC/16/47, annex), the Working Group transmitted the above-mentioned communication to the Government.

2. The Working Group regards deprivation of liberty as arbitrary in the following cases:

(a) When it is clearly impossible to invoke any legal basis justifying the deprivation of liberty (as when a person is kept in detention after having the completion of his or her sentence or despite an amnesty law applicable to the detainee) (category I);

(b) When the deprivation of liberty results from the exercise of the rights or freedoms guaranteed by articles 7, 13, 14, 18, 19, 20 and 21 of the Universal Declaration of Human Rights and, insofar as States parties are concerned, by articles 12, 18, 19, 21, 22, 25, 26 and 27 of the International Covenant on Civil and Political Rights (category II);

(c) When the total or partial non-observance of the international norms relating to the right to a fair trial, established in the Universal Declaration of Human Rights and in

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the relevant international instruments accepted by the States concerned, is of such gravity as to give the deprivation of liberty an arbitrary character (category III);

(d) When asylum seekers, immigrants or refugees are subjected to prolonged administrative custody without the possibility of administrative or judicial review or remedy (category IV);

(e) When the deprivation of liberty constitutes a violation of international law for reasons of discrimination based on birth, national, ethnic or social origin, language, religion, economic condition, political or other opinion, gender, sexual orientation, or disability or other status, and aims towards or can result in ignoring the equality of human rights (category V).

Submissions

Communication from the source

3. The case set out below was reported to the Working Group on Arbitrary Detention in the following terms.

4. Christophe Désiré Bengono, born on 8 May 1970 in Yaoundé and a national of Cameroon, is an accountant and a former accounting and finance director at the Aéroports du Cameroun S.A. (ADC) company. Mr. Bengono is being treated for serious health problems by a specialist in France.

5. According to the information received, Mr. Bengono was arrested on the basis of a warrant issued by the Public Prosecutor of the Mfoundi Court of Major Jurisdiction at 6.30 a.m. on 6 January 2010 at his home in the Odza district of Yaoundé by a special operations group (a police unit engaged in combating organized crime). He was then transferred and taken into custody by the judicial police on instructions from the same Prosecutor. The source alleges that the custody was illegal because Mr. Bengono had not been informed of the grounds warranting such action.

6. The investigating judge at the Mfoundi Court of Major Jurisdiction reportedly ordered the incarceration of Mr. Bengono, on 7 January 2010, first at Yaoundé central prison and, with effect from 27 July 2010, at Yaoundé Hospital and Medical Training Centre and subsequently at Yaoundé Central Hospital on account of his serious illness.

7. According to the submissions, a preliminary inquiry had been conducted by the Judicial Police Directorate on 25 November 2008. Mr. Bengono had then been questioned about withdrawals from the bank account of the local security committee which contained funds belonging to the ADC company for which he worked. The Judicial Police Directorate had eventually concluded that the withdrawals were justified.

8. The source reports, however, that the Public Prosecutor concluded, in his written application for an investigation of 7 January 2010, that the preliminary inquiry had yielded sufficient evidence against Mr. Bengono. Thus, Mr. Bengono was held to have withdrawn funds from the ADC company and from the bank accounts opened on behalf of the local security committee. He was also held to have issued fictional loans, with the assistance of other persons, that enabled him to obtain funds belonging to the ADC company by fraudulent means.

9. The source reports that, during the preliminary inquiry, Mr. Bengono was never informed of these facts or given the opportunity to respond to them. Moreover, it could not be established from a reading of the records that such offences had been committed. The source claims that the investigating judge charged Mr. Bengono with the facts contained in the written application without a hearing and ordered that he be placed in pretrial detention.

10. After his placement in pretrial detention on 7 January 2010, Mr. Bengono's health swiftly deteriorated. Medical examinations conducted between May and July 2010 concluded that he was seriously ill and arrangements were made for his admission to hospital in France in October 2010. According to the source, Mr. Bengono filed a petition in this connection, on 17 August 2010, for release from pretrial detention. The petition was rejected by the investigating judge on 14 September 2010. The source reports that the Ministry of Public Health turned down the doctors' request for evacuation, arguing that Mr. Bengono's status as an employee of the Aéroports du Cameroun company did not entitle him to benefit from the provisions of Decree 2000/692/PM of 13 September 2000 because it was applicable only to civil servants and public officials. Numerous requests for evacuation were subsequently filed to no avail.

11. According to the source, the investigating judge's order to close the investigation contained new facts concerning misappropriation of funds unearthed by the judge, although Mr. Bengono was never questioned about those facts or even charged with them. In addition, allegations of forgery by Mr. Bengono of commercial documents were reportedly reclassified as complicity in the forgery of banking or commercial documents without Mr. Bengono being given the opportunity by the investigating judge to comment on the new characterization of the offence. The investigating judge had then returned the order to the criminal court without indicating which law had been breached.

12. According to the submissions, the Public Prosecutor decided to institute proceedings against Mr. Bengono for misappropriation of public funds because the State of Cameroon held most of the capital of the ADC company. According to the source, however, the 2011 Finance Act states that only 29 per cent of the company's capital is held by the Cameroonian State. The source also points out that the Prosecutor's claim is inconsistent with the ground invoked for denying the petition for release from pretrial detention of 14 September 2010, according to which Mr. Bengono did not have the status of a civil servant or public official.

13. The source claims that the ADC company is governed by the Uniform Act on Commercial Companies and Economic Interest Groups of the Organization for the Harmonization of Business Law in Africa. According to the source, articles 1 and 891 of that Act, which characterize such acts as embezzlement of a company's assets, should have been invoked rather than article 184 of the Criminal Code concerning misappropriation of public funds.

14. According to the source, Mr. Bengono was brought before the trial court to answer charges that were unwarranted or did not concern him. Furthermore, the committal for trial order dated 1 July 2011 breached article 257 of the Code of Criminal Procedure since it contained no definition of the criminal offence and no reference to the applicable legislation either in the operative provisions or in the grounds.

15. The source contends that Mr. Bengono's detention is arbitrary on account of the nullity of the committal for trial order due to its formal irregularity and the misinterpretation of article 262, paragraph 2, of the Code of Criminal Procedure, pursuant to which the committal for trial order does not terminate pretrial detention.

16. The source notes that the pretrial detention has lasted for more than four years, although the maximum period of such detention stipulated by articles 218 and 221 of the Code of Criminal Procedure is 18 months. In addition, article 9 of the Act of 10 July 2003 which, according to the source, is applicable in the instant case, stipulates that the maximum sentence for embezzlement of a company's assets is 5 years' imprisonment. Mr. Bengono, however, has been in pretrial detention for more than four years and four months.

17. According to the submissions, an interlocutory decision was handed down on 23 February 2012. The decision allegedly dismissed the objection to jurisdiction and the

objection based on the nullity of the proceedings raised by the defence, and ignored the objections concerning the failure to interrogate.

18. The source reports that Mr. Bengono filed an appeal on 24 February 2012, but that it took the Chief Registrar of the Mfoundi Court of Major Jurisdiction until 4 July 2012 to compile a record of the appeal. The source further indicates that it took until 21 August 2012 to include the case for the first time in the list of appeal cases, and that the hearing was twice deferred.

19. Act No. 2011/028 of 14 December 2011 establishing a Special Criminal Court at the Supreme Court, as amended by Act No. 2012/011 of 16 July 2012, was invoked on 20 November 2012 to remove the case from the Appeal Court and refer it to the Special Criminal Court, which has jurisdiction over cases of misappropriation of public funds. The source alleges that the Court lacks jurisdiction in the instant case because the committal for trial order contained no definition of the criminal offence and no reference to the applicable legislation and because the offence of misappropriation of public funds was not applicable to the case of Mr. Bengono.

20. According to the source, the file was not transmitted to the Special Criminal Court until 27 February 2013 and the defence was only notified thereof for the purpose of filing further pleadings on 24 July 2013. The source adds that in the meantime, on 3 June 2013, Mr. Bengono had filed a new petition to be released with the President of the Specialized Division of the Supreme Court, but that no action had been taken on the petition to date.

21. On 30 April 2014, the Special Criminal Court declared the case inadmissible on the ground that the decision of the Court of Major Jurisdiction should have been subject to appeal, in accordance with articles 15 and 16 of Act No. 2011/028 of 14 December 2011.

22. According to the source, article 15 of Act No. 2011/028 of 14 December 2011 stipulates that pending proceedings must be concluded within six months of the date of the Court's entry into operation. As the Court's inaugural hearing was held on 5 October 2012, the source points out that Mr. Bengono could not file an appeal to a court that had not existed in February 2012. He was therefore fully entitled to file an appeal against the interlocutory decision pursuant to article 437 of the Code of Criminal Procedure. According to the source, Act No. 2012/011 of 16 July 2012, which had not yet entered into force in February 2012, was the only legislation that was immediately applicable and that would have required Mr. Bengono to file an appeal.

23. On 1 April 2014, Mr. Bengono submitted a petition for immediate release, which was dismissed on 22 April 2014, a decision that is currently being appealed.

24. According to the source, Mr. Bengono's detention is arbitrary and falls into category I of the criteria applicable to cases submitted to the Working Group for consideration. The source alleges that article 9 of the Universal Declaration of Human Rights and article 9 of the International Covenant on Civil and Political Rights have been violated by the extension of pretrial detention beyond the legal time limit of 18 months laid down in articles 218 and 221 of the Code of Criminal Procedure.

25. The source claims that Mr. Bengono's detention also falls into category III of the criteria applicable by the Working Group, alleging that numerous procedural irregularities constitute a violation of articles 9 and 10 of the Universal Declaration of Human Rights and articles 9 and 14 of the International Covenant on Civil and Political Rights.

26. According to the source, fair trial guarantees have not been respected, including the right to be tried within a reasonable time, as demonstrated by the passage of a period of two years and two months from the date on which Mr. Bengono filed an appeal, and the delay of one year and two months between the decision to transfer the case to the Special Criminal Court and the handing down of a decision by that Court.

27. In addition, again according to the source, Mr. Bengono was never given the opportunity to express his views, during the preliminary investigation or the remainder of the legal proceedings, on certain evidence contained in the initial application for an investigation. His views were not heard either on the charges filed against him in the investigating judge's order to close the investigation. Furthermore, the committal for trial order contained no charge and no definition of a criminal offence.

28. Lastly, the source argues that the Special Criminal Court lacks jurisdiction to try Mr. Bengono, since the facts do not constitute misappropriation of public funds but embezzlement of a company's assets.

Response from the Government

29. In a letter dated 15 August 2014, the Working Group transmitted the above-mentioned allegations to the Cameroonian Government and requested detailed information regarding Mr. Bengono's current situation and clarification of the legal grounds warranting his detention.

30. The Working Group regrets that there has been no response from the Government to date concerning the allegations transmitted to it nor any request for an extension of the time period granted for submission of a reply, in accordance with paragraphs 15 and 16 of the Working Group's methods of work.

31. Notwithstanding the Government's failure to reply, the Working Group considers that it is in a position to render an opinion on Mr. Bengono's detention, in accordance with paragraph 16 of its methods of work, relying solely on the information provided by the source.

Supplementary information from the source

32. On 17 October 2014, the source submitted supplementary information which added nothing new to the file that would have warranted a fresh communication. However, the correspondence provided evidence that the Working Group has duly taken into account.

Discussion

33. Mr. Bengono was arrested on 6 January 2010 by a special operations group on the basis of a warrant issued by the Public Prosecutor of the Mfoundi Court of Major Jurisdiction. He remained in pretrial detention for more than four years before being tried. He is reportedly still in detention today.

34. The source alleges that the present case constitutes arbitrary detention under categories I and III as defined in the Committee's methods of work.

35. With regard to category I, the source challenges the legal basis of the procedural measures justifying detention. In the absence of any contrary argument by the Government, and inasmuch as there is no internal contradiction in the well-documented allegation that might undermine the credibility of the source, the Working Group considers that the detention has no legal basis.

36. With regard to category III, the source highlights the delays that occurred between the different procedural measures, arguing that such delays were unreasonable. In the absence of grounds for refuting this allegation, the Working Group concludes not only that the delays violate the right to be tried within a reasonable time, but also that the total amount of time spent in detention violates the same right, bearing in mind the maximum penalty that may be imposed for the alleged offence.

37. Furthermore, the Working Group notes with deep concern that Mr. Bengono has been denied the medical care required by his state of health, and considers that this also constitutes a violation of the right to a fair trial, since all steps required by a defendant's state of health should be permissible under the criminal justice system. The health risk involved is apparently serious, and responsibility lies with the Cameroonian State, which should take the necessary steps as soon as possible to provide Mr. Bengono with access to the treatment and follow-up he requires for his recovery and good health.

Disposition

38. In the light of the foregoing, the Working Group renders the following opinion:

> The deprivation of liberty of Christophe Désiré Bengono is arbitrary inasmuch as it has no legal basis and it violates the right to a fair trial; it constitutes a breach of the rights and freedoms guaranteed in articles 9 and 10 of the Universal Declaration of Human Rights and in articles 9 and 14 of the International Covenant on Civil and Political Rights. It therefore falls within categories I and III of the criteria applicable to the consideration of cases submitted to the Working Group.

39. The Working Group therefore requests the Cameroonian Government to release Mr. Bengono without delay and to take the necessary steps to redress the material and moral damages he has suffered by providing reasonable and appropriate compensation in accordance with article 9, paragraph 5, of the International Covenant on Civil and Political Rights.

40. The Working Group notes that the Human Rights Council has requested all States to cooperate with the Working Group, to take account of its views and to take appropriate steps to remedy the situation of persons arbitrarily deprived of their liberty, and to inform the Working Group of the steps they have taken.[1] The Working Group therefore requests the full and complete cooperation of the Republic of Cameroon in implementing this Opinion as an effective remedy for a breach of international law.

[*Adopted on 19 November 2014*]

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[1] Resolution 24/7 of the Human Rights Council, paras. 3, 6 and 9.